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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: SRC 02 189 56213 Office: TEXAS SERVICE CENTER

JAN 09 2003
Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

Identifying data deleted to
prevent identity theft and
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Acting Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a medical research and teaching institution. The beneficiary is a physician. The petitioner seeks O-1 classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an assistant professor at the University of Arkansas medical school, at a salary of \$191,200 per year.

The acting director denied the petition finding that the petitioner failed to establish that the beneficiary has sustained recognition as being among a small percentage at the very top of the field.

On appeal, counsel for the petitioner submitted a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the acting director's decision, an appeal and brief.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the acting director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in medical science as defined in these proceedings.

8 C.F.R. 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field

of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's

occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a native and citizen of India. The record reflects that he received his medical degree in 1994 in Gwalior, M.P., India. He completed an internship and a residency at the Louisiana State University Medical Center in Shreveport, Louisiana, in 1998 and 1999, respectively. He spent the next two years as a resident at the Columbia-Presbyterian Medical Center. He completed a cardio-thoracic anesthesia fellowship at Columbia in June 2002. He co-authored two articles, one of which has been accepted for publication, and the other is under consideration. He co-authored two abstracts. The record reflects that he was last admitted to the United States on August 30, 2002 in J-1 classification as an exchange visitor.

After reviewing the evidence submitted in support of the petition, the acting director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he is "at the very top" of his field of science pursuant to 8 C.F.R. 214.2(o)(3)(ii). The acting director concluded that the record failed to show that the beneficiary was recognized as a physician of extraordinary ability whose achievements have been recognized in the field through extensive documentation.

On appeal, counsel for the petitioner asserts that the acting director's decision is based neither in law nor in fact, but rather on speculation.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the acting director's objections. There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 CFR 214.2(o)(iii)(B).

For criterion number one, the petitioner submitted a letter from an assistant professor of anesthesiology at Yale University that states that the beneficiary has been the recipient of many

impressive honors and awards, including "a highly coveted fellowship in cardio-thoracic anesthesiology" from the New York Presbyterian Hospital, and the honor of being selected to attend Gajra Raja Medical College, plus his selection to participate in two "prestigious residency programs." The petitioner competed with other students for these positions and not with professors who had already completed their training and enjoyed acclaim and recognition for their achievements in the field of medical science. The petitioner failed to establish that the beneficiary satisfies criterion number one.

For criterion number two, while the beneficiary is a member of the American Board of Anesthesiology, the New York State Society of Anesthesiologists, the International Anesthesia Research Society, and the American Society of Anesthesiologists, there is no evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines, nor is there such evidence on the organizations' websites.

For criterion number three, no evidence was submitted.

According to the author of one testimonial, the beneficiary evaluated the quality of the teaching of senior faculty at Columbia University. The petitioner failed to provide sufficient information for the Administrative Appeals Office to evaluate whether the beneficiary judged the work of others in the same or in an allied field of specialization to that for which classification is sought. The petitioner failed to establish that the beneficiary satisfies criterion number four.

As evidence of the beneficiary's original scientific contributions of major significance in the field of medicine, the petitioner submitted several testimonials. One associate professor wrote that cardiac anesthesiologists play a crucial role in many aspects of open-heart surgery and that the beneficiary has played an important role in the investigation and development of robotic surgery. The record does not contain contemporaneous corroborating evidence such as news articles or articles in professional journals about the beneficiary's role in developing robotic surgery. The petitioner fails to demonstrate how the beneficiary has made a significant contribution to his field of endeavor. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

For criterion number six, the petitioner provided evidence that the beneficiary has co-authored two articles that have been submitted for publication. The record does not show that the articles have actually been published. The petitioner provided

evidence that the beneficiary has co-authored two abstracts: *The Efficacy and Safety of Standard Dose Interscalene Anesthesia for Shoulder Surgery* and a *National Survey Regarding the Management of Intraoperatively Diagnosed Patent Foramen Ovale During Coronary Artery Bypass Graft Surgery*. In review, the evidence fails to show that the beneficiary has sustained national or international acclaim and recognition for achievements in the field of medicine through authorship of scholarly articles.

For criterion number seven, the beneficiary has been employed as a resident, and a fellow at prestigious medical institutions. While employment with such institutions is evidence of a degree of recognition, such staff or assistant positions are not considered employment in a "critical or essential capacity" as would a department head or lead researcher on major projects.

For criterion number eight, no evidence of the beneficiary's salary history was provided. The petitioner intends to pay the beneficiary an annual salary of \$191,200. The petitioner provided the Service with evidence that the prevailing wage for anesthesiologists in Little Rock, Arkansas ranges from \$128,500 to \$145,500 a year. The proffered wage is significantly higher, so the petitioner has established that the beneficiary satisfies criterion number eight.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

In order to establish eligibility for O-1 classification, the petitioner also must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. 214.2(o)(3)(ii). In order to meet these criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, and hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have not yet risen to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.